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| APPLICATION NO.                                                           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/084,401                                                                | 02/25/2002  | Lynne Marie Evans    | 013.0226.01         | 6885             |
| 22895                                                                     | 7590        | 06/16/2006           | EXAMINER            |                  |
| PATRICK J S INOUE P S<br>810 3RD AVENUE<br>SUITE 258<br>SEATTLE, WA 98104 |             |                      | BRIER, JEFFERY A    |                  |
|                                                                           |             |                      | ART UNIT            | PAPER NUMBER     |
|                                                                           |             |                      | 2628                |                  |

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 10/084,401             |  | EVANS, LYNNE MARIE  |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Jeffery A. Brier       |  | 2628                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5,8-11,14,15,18,21-24,27-33,35-41 and 43-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8-11,14,15,18,21-24,27-33,35-41 and 43-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/28/2006 has been entered.

### ***Response to Amendment***

2. The amendment filed on 3/28/2006 has been entered. On page 3 of this response applicant amends page 8 lines 20 through page 9 line 2 by reinstating reference number 48. The 9/9/2005 amendment deleted reference number 48 since the drawings did not use reference number 48 to reference anchor points. Thus, the drawings as a result of the specification are objected to once again for not showing reference number 48 in figure 3.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

Page 8 at line 26 (see the 3/28/2006 amendment to the specification) describes anchor points 48, however, anchor points 48 are not illustrated in figure 3 nor in any figure.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Response to Arguments***

4. Applicant's arguments filed 3/28/2006 with regard to "two dimensional visual display area" and "memory" at page 16 lines 13-17 have been fully considered but they are not persuasive because the claims are not limited to storing the "two dimensional visual display area" in a memory, thus, these claimed processes are abstract.

5. Applicant's arguments filed 3/28/2006 with regard to the currently claimed processes have been fully considered and are not deemed to be persuasive. Note claim 14 and claim 24 do not claim the argued "can only be adjacently placed", see page 17 line 20 and page 19 line 11 of the response. At page 19 lines 12-14 of the response applicant argues "Gallivan teaches away from an open edge where another cluster can only be adjacently placed by allowing clusters to overlay other clusters." This argument is not persuasive because Gallivan's clusters 193 and 196 do not overlay each other, thus, the rejection based upon Gallivan could be maintained, but, due to the following 35 USC 112 second paragraph rejection the rejection is not maintained below. Applicant needs to better claim the location of the anchor points to differentiate the claimed anchor points from the anchor points in the Gallivan patent no. 6,778,995.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1, 2, 5, 8-11, 14, 15, 18, 21-24, 27-33, 35-41, and 43-56 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In view the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility published on the USPTO website on October 26, 2005,

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)

and published in the OG 22Nov2005

<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>).

The following 35 USC 101 rejection is now required.

8. This application is directed to a useful, concrete, and tangible result, however, these claims are not. These claims are directed to data manipulation without producing a useful and tangible result. Independent claims 1, 14, 28, and 36 claim placing the clusters set into a two-dimensional visual display area but does not actually display clusters, thus, the claims are directed to abstract data processing of the clusters. Even claims 48 and 52 do not actually claim displaying the clusters, thus, they still claim abstract data processing of the clusters. The specification at page 7 lines 8-10 discusses "Finally, the display and visualize module 20 performs the actual display of the clusters 17 via the display 14 responsive to commands from the input devices, including keyboard 12 and pointing device 13." which appears to be a useful and tangible practical result. *State Street Bank & Trust Co. v. Signature Financial Group Inc.* (CA FC) 47 USPQ2d 1596, 1603 (7/23/1998). *AT&T Corp. v. Excel Communications Inc.* (CA FC) 50 USPQ2d 1447. On page 1603 first paragraph the CAFC wrote in *State Street*:

Under *Benson*, this may have been a sufficient indicium of nonstatutory subject matter. However, after *Diehr* and

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Alappat , the mere fact that a claimed invention involves inputting numbers, calculating numbers, outputting numbers, and storing numbers, in and of itself, would not render it nonstatutory subject matter, unless, of course, its operation does not produce a "useful, concrete and tangible result." Alappat , 33 F.3d at 1544, 31 USPQ2d at 1557. 7

On page 1603 paragraph labeled [4] the CAFC wrote:

[4] The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to -- process, machine, manufacture, or composition of matter-- but rather on the essential characteristics of the subject matter, in particular, its practical utility. Section 101 specifies that statutory subject matter must also satisfy the other "conditions and requirements" of Title 35, including novelty, nonobviousness, and adequacy of disclosure and notice. See In re Warmerdam , 33 F.3d 1354, 1359, 31 USPQ2d 1754, 1757-58 (Fed. Cir. 1994).

### ***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1, 2, 5, 8-11, 14, 15, 18, 21-24, 27-33, 35-41, and 43-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1:

At lines 16-18 the vector is not clearly claimed and its association with the anchor point is not clearly developed.

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At line 16 this claim claims "can only be adjacently placed". This is not clear since there are several locations, see applicants figure 4A which illustrates 5 open edges (55a-55e), that another cluster can be attached to the cluster. Applicant needs to better claim the location of the anchor points to differentiate the claimed anchor points from the anchor points in the Gallivan patent no. 6,778,995.

Claim 5:

It is not clear if the vector claimed in parent claim 1 is for the anchor point, thus, "the vector for the anchor point" appears to lack antecedent basis in the claim.

Claim 11:

Dependent claim 11 at line 5 "can only be adjacently placed". This is not clear since there are several locations, see applicants figure 4A which illustrates 5 open edges (55a-55e), that another cluster can be attached to the cluster.

At line 4 "another" is claimed, however, the claim does not distinguish this recitation of "another" from the "another" found in claim 1 at line 16.

Claim 14:

At lines 16-18 the vector is not clearly claimed and its association with the anchor point is not clearly developed.

At line 16 this claim claims "can be adjacently placed". This is not clear since there are several locations but not all, see applicants figure 4A



which illustrates 5 open edges (55a-55e), that another cluster can be attached to the cluster. Applicant needs to better claim the location of the anchor points to differentiate the claimed anchor points from the anchor points in the Gallivan patent no. 6,778,995.

Claim 18:

It is not clear if the vector claimed in parent claim 14 is for the anchor point, thus, "the vector for the anchor point" appears to lack antecedent basis in the claim.

Claim 28:

At lines 25-27 the vector is not clearly claimed and its association with the anchor point is not clearly developed.

At line 25 this claim claims "can only be adjacently placed". This is not clear since there are several locations, see applicants figure 4A which illustrates 5 open edges (55a-55e), that another cluster can be attached to the cluster. Applicant needs to better claim the location of the anchor points to differentiate the claimed anchor points from the anchor points in the Gallivan patent no. 6,778,995.

Claim 36:

At lines 24-26 the vector is not clearly claimed and its association with the anchor point is not clearly developed.

At line 23 this claim claims "can only be adjacently placed". This is not clear since there are several locations, see applicants figure 4A which

illustrates 5 open edges (55a-55e), that another cluster can be attached to the cluster. Applicant needs to better claim the location of the anchor points to differentiate the claimed anchor points from the anchor points in the Gallivan patent no. 6,778,995.

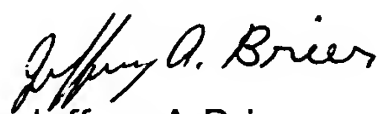
11. A prior art rejection cannot be made because the metes and bounds of the claims are not definite and because the specification does not support the claims. Thus, an indication of allowability would be premature. In re Steele, 305 F.2d 859,134 USPQ 292 (CCPA 1962) (it is improper to rely on speculative assumptions regarding the meaning of a claim and then base a rejection under 35 U.S.C. 103 on these assumptions).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffery A Brier whose telephone number is (571) 272-7656. The examiner can normally be reached on M-F from 7:00 to 3:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi, can be reached at (571) 272-7664. The fax phone Number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeffery A Brier  
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